

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed
Adoption of Department of
Human Service Rules Governing
the Aid to Families with
JUDGE
Dependent Children (AFDC)
Program, Minnesota Rules,
Part 9500.2700, Subpart 5.

REPORT OF THE
ADMINISTRATIVE LAW

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 9:00 a.m. on Friday, March 9, 1990 at the Minnesota

Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota. This Report is part of a rule hearing proceeding held pursuant to Minn. Stat.

14.131 - 14.20 to determine whether the agency has fulfilled all relevant substantive and procedural requirements of law, whether the proposed rules are

needed and reasonable, and whether or not the rules, if modified, are substantially different from those originally proposed.

Patricia A. Sonnenberg, Special Assistant Attorney General, Suite 200, 520 Lafayette Road, St. Paul, Minnesota 55155, appeared on behalf of the Minnesota Department of Human Services. Appearing and testifying in support

of the proposed rules on behalf of the Department were: Paul Timm-Brock, Assistance Payments Director; Karen Schirle, Quality Control Division; and Ila

Schneibel, Quality Control Division. The hearing continued until all interested

groups and persons had had an opportunity to testify concerning the adoption of the proposed rules.

This Report must be available for review to all affected individuals upon request for at least five working days before the agency takes any further action on the rule(s). The agency may then adopt a final rule or modify or withdraw its proposed rule. If the Department of Human Services makes changes

in the rule other than those recommended in this report, it must submit the rule with the complete hearing record to the Chief Administrative Law Judge for

a review of the changes prior to final adoption. Upon adoption of a final rule,

the agency must submit it to the Revisor of Statutes for a review of the form of the rule. The agency must also give notice to all persons who requested to

be informed when the rule is adopted and filed with the Secretary of State.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On January 25, 1990, the Department filed the following documents with the Chief Administrative Law Judge:

- (a) A copy of the proposed rules certified by the Revisor of Statutes.
- (b) The Order for Hearing.
- (c) The Notice of Hearing proposed to be issued.
- (d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.
- (e) The Statement of Need and Reasonableness.

2. On January 29, 1990, a Notice of Hearing and a copy of the proposed rules were published at 14 State Register pp. 1920 - 1922.

3. On January 24, 1990, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice.

4. On February 8, 1990, the Department filed the following documents with the Administrative Law Judge:

- (a) The Notice of Hearing as mailed.
- (b) The Agency's certification that its mailing list was accurate and complete.
- (c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
- (d) An Affidavit of Additional Notice.
- (e) The names of Department personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
- (f) A copy of the State Register containing the proposed rules
- (g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 12 State Register page 1974 (March 7, 1988) and a copy of the Notice.

The documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. The period for submission of written comment and statements remained open through March 29, 1990, the period having been extended by Order of the Administrative Law Judge to 20 calendar days following the hearing. The record closed on April 3, 1990, the third business day following the close of the comment period.

Statutory Authority

6. Statutory authority to promulgate the proposed rule amendments is found at Minn. Stat. 256.851 (1988).

Fiscal impact Statement

7. Pursuant to Minn. Stat. 3.982, 14.11 and 14.131 (1988), the Department filed a fiscal note setting forth the anticipated cost to the State and local units of government over the next two years if these proposed rule

amendments are adopted and implemented. The Department estimates that during the two years following rule implementation, the State will save approximately \$48,000 in administration expenses and the counties will save approximately \$721,900 in similar expenses.

Nature of the Proposed Rule Amendment

8. The proposed amendment eliminates the requirement for quarterly reporting for all Aid to Families With Dependent Children (AFDC) assistance units not otherwise required to report on a monthly basis. The requirement to report monthly will continue for all AFDC assistance units which have earned income, a recent work history (within the last three months), or income allocated to the unit from a financially responsible person living with that unit who has earned income or a recent work history. Additional groups or AFDC assistance units may be required to report monthly if they are in a category that has a greater proportion of the State's total program errors, as identified through the quality control process. Approximately one-third of the current AFDC caseload reports monthly. Every AFDC assistance unit must have its eligibility redetermined at a face-to-face interview at least once annually. Cases which must report monthly or are covered by a low error prone profile are exempt from more frequent redeterminations. The effect of the proposed rule amendment is to change the reporting requirement from quarterly to annual for one segment of AFDC assistance units.

Discussion of the Proposed Rules

9. The Department of Human Services contends that the proposed rule amendment is both needed and reasonable for the following reasons:

- (a) Quarterly reporting creates a technical barrier to client participation which is not based on the client's actual eligibility for the program. Studies have shown that over 90% of clients who have their benefits stopped for failure to turn in a report form are in fact otherwise eligible for benefits. The quarterly report poses a major obstacle for clients who are not literate in English.
- (b) Quarterly reporting is an unusual program element and complicates program administration. It is unique to AFDC and its elimination will make mandatory periodic reporting requirements the same in both food stamps and AFDC. Over 80% of the AFDC caseload receives food stamps.
- (c) The elimination of quarterly reporting is consistent with the Department's restructuring of intake and case management. The

Department has made policy revisions to simplify client requirements and make programs consistent. The Combined Application Form (CAF), the revised household report form, and the change report form now in development are intended for use in all programs. The Department now requires one interview at application for all programs and is

In order for an agency to meet the burden of reasonableness, it must demonstrate by a presentation of facts that the rule is rationally related to the end sought to be achieved, *Broen Memorial Home v. Minnesota Department of Human Services*, 364 N.W.2d 436, 440 (Minn. App. 1985). Those facts may either be adjudicative facts or legislative facts. *Manufactured Housing Institute v. Pettersen*, 347 N.W.2d 238, 244 (Minn. 1984). The agency must show that a reasoned determination has been made. *Manufactured Housing Institute* at 246.

promoting the one-worker-per-family concept of case management. This provides clients with "one-stop" reporting for all their benefit programs.

- (d) Quarterly reporting is costly. It requires approximately 58,500 staff hours at a cost of approximately three-quarter of a million dollars to process almost 160,000 quarterly reports annually.
- (e) Quarterly reporting is ineffective. The Department has found that quarterly reporting has no effect on the level of errors which is the main purpose of mandatory reporting. The majority of errors, approximately 70%, are the responsibility of the agency and not the client. In Minnesota almost three-fourths of the agency errors were discovered in the case record by the quality control reviewer. Less than one percent of all FFY 1988 cases reviewed by quality control contained errors caused by client willful misrepresentation. A national survey conducted by the Department showed that states with high error rates are just as likely to have stringent reporting requirements as states with low or moderate error rates.
- (f) Other reporting system components can be as effective, or more so, in enabling client reporting. The use of the change report form is being expanded from just food stamps to all programs. A supply of the forms will be furnished to clients at application and at each redetermination. If a change report form is submitted, the agency will send out a new form. When the State begins to mail benefits to clients, the change report form will be mailed to all clients with their monthly benefits. The Department now uses the CAF to redetermine eligibility which will expand the review conducted. Monthly reporting will remain in effect for approximately one-third of the AFDC caseload. This requirement can be expanded to error prone case categories if it is found necessary. The Department conducts monthly computer data exchanges involving all recipients and all applicants with several federal data bases and the Department of Jobs and Training. These exchanges supply information concerning unreported income and assets. The planned automated eligibility system (MAXIS) for income maintenance programs will streamline the process. The MAXIS program will enhance caseworkers' ability to manage case information and followup on discrepancies or questionable information.
- (g) The repeal of quarterly reporting is consistent with legislative directives to reduce reporting requirements and to reduce verification to the minimum needed to determine eligibility. Minn. Laws 1987, ch. 403, art. 3, 3 directed the Department to establish a committee to reduce the burden of verification requirements on clients.
- (h) The proposed change will reduce the paperwork burden on county workers. This will be accomplished by eliminating the quarterly reporting requirement with its associated administrative cost and drain on workers' time and energy.
- (i) The elimination of quarterly reporting will facilitate MAXIS because MAXIS involves transferred software from a state which does not have

quarterly reporting. The federal government has required that Minnesota transfer another state's automated eligibility system with minimal changes in order to contain the costs of the system. Quarterly reporting was not available in any transfer system because no other state has this requirement. To change this course now, only four months before pilot test of the MAXIS system, will cause the Department to miss the timeframes to which it has committed and quite probably result in fiscal penalties.

10. Public commenters raised three major issues in opposition to the proposed rule amendment: (1) the amendment will conflict with 45 C.F.R.

206.10(a)(9)(iii) which requires eligibility redeterminations at least every six months; (2) the elimination of quarterly reporting will make it impossible to prosecute criminal actions against welfare "abusers"; and (3) implementation of this amendment will actually result in more work for caseworkers which will not be lessened by alternate reporting and verification mechanisms. These three concerns will be discussed, individually, below.

11. The federal regulation cited above, 45 C.F.R. 206.10(a)(9)(iii), reads, in pertinent part:

A state plan under title . . . IV-A . . . of the Social Security Act shall provide that:

Where an individual has been determined to be eligible, eligibility will be reconsidered or redetermined:

Periodically, within agency established time standards. . . . For recipients of AFDC, all factors of eligibility will be redetermined At least every 6 months except in the case of monthly reporting cases or cases covered by an approved error-prone profiling system as specified in paragraph (a)(9)(iv) of this section. Under the AFDC program, at least one face-to-face redetermination must be conducted in each case once in every 12 months. (Emphasis added.)

The Department contends that the AFDC households currently reporting quarterly are low error profile cases which fall within the exception contained in the federal regulation. Additionally, the State has asked the federal agency to confirm its belief that Minnesota can forego six-month eligibility redeterminations for those households. A waiver is currently pending before the federal government. The Department points out that Minn. Rule 9500.2420,

subp. 5 currently does require a semiannual redetermination of eligibility for all recipients other than those who report monthly or are included in a low error category.

Based on what the Department has asserted, the Judge does not find a conflict with federal law. However, this issue is one which the federal agency

and Department of Human Services must resolve between themselves. A request for a waiver is currently pending before the federal agency. The Judge will not interpose himself in that process.

12. Thirteen counties submitted comments objecting to the proposed elimination of quarterly reporting.' These comments generally state that if eligibility is determined only on an annual basis for these clients, eligibility errors could go unreported for up to 12 months resulting in a large overpayment of funds. Because recoupment of overpaid funds is done by a setoff from current benefits, the overpayments will have to be collected over a long period of time and, in some cases, may be uncollectible. Additionally, it will take case-workers much additional time to calculate the level of overpayment for the previous year and the appropriate level of setoff for the upcoming year. These counties contend that clients will not submit change report forms concerning changes in circumstances within ten days as is required by law. Consequently, eligibility errors could continue throughout an entire 12-month period and the counties argue that they will not be found out by the new automated computer system.

The Department argues that there is no evidence to suggest that recipients will not report changes in circumstances with any less regularity than they did with quarterly reporting. If overpayments are made, the calculations will have to be done, and offsets imposed, regardless of the length of time that the error existed. Additionally, the Department asserts that use of the new MAXIS system will allow for the matching of current data bases to ensure consistency in validity.

The record in this case shows a rigid divergency between the benefits of eliminating the quarterly reporting mechanism asserted by the Department and the disadvantages argued by several Minnesota counties. However, the Judge finds that the Department has demonstrated the need for and reasonableness of the proposed rule amendments by an affirmative presentation of facts (see Finding 9). The Judge points out that the effects of implementation of this rule are, at this point, mainly speculative. The Department has asserted a rational basis for the proposed rule. It will take a period of time after the rule is in place to determine whether there is an overall benefit to the elimination of quarterly reporting.

13. Several county attorneys and county fraud investigators adamantly object to the proposed rule amendments because, they contend, signed quarterly reporting forms are essential to prove intent in a criminal prosecution for welfare fraud. They argue that if quarterly reporting is eliminated, they will

be unable to prosecute these cases and recipients who knowingly abuse the system will do so without the risk of criminal penalty. The Department contends that other states which do not have quarterly reporting requirements successfully prosecute fraud cases by use of the application and redetermination forms.

2Hennepin County submitted comments supporting the elimination of quarterly reporting stating that quarterly reports are expensive to process and the information obtained from them is "marginal".

This issue, like the one discussed above, will require further assessment after the proposed rule amendment is implemented. The Department testified at the hearing that they were attempting to devise a check endorsement form which would constitute an affirmation by the recipient that there was no change in his/her circumstances. The Judge strongly suggests that such a tool be developed and implemented so that persons who willfully commit fraud can be apprehended and prosecuted. The proposed rule amendments are not unreasonable, however, because implementation of the new rule would detract from a county's ability to prosecute welfare abusers. That was never the intent of the rule as initially adopted. The fact that Minnesota is the only state that requires quarterly reporting must indicate that there are other ways to prove intent to defraud other than a quarterly report form.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Department of Human Services gave proper notice of the hearing in this matter.
2. That the Department has fulfilled the procedural requirements of Minn. Stat. 14.14, and all other procedural requirements of law or rule.
3. That the Department has documented its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii).
4. That the Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. 14.14, subd. 2 and 14.50 (iii).
5. That the additions and amendments to the proposed rules which were suggested by the Department after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. 14.15, subd. 3, Minn. Rule 1400.1000, subp. I and 1400.1100.
6. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such .
7. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the rules based upon an examination of

the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted consistent with the Findings and Conclusions made above.

Dated this 19 day of April, 1990.

PETER C. ERICKSON
Administrative Law Judge